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STATE OF
MONTANA
BOARD OF EQUALIZATION
HELENA, MONTANA



INCOME TAX LAW

Title 84, Chapter 49,
Revised Codes of Montana, 1947, As Amended.
(Includes All Amendments Through Laws of 1965)

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94-4901. Income tax—definitions. For the purpose of this act unless otherwise required by the context:

(1) The word "board" means the state board of equalization.

(2) The word "taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this act, and does not include corporations.

(3) The words "taxable year" mean the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this act, and include the period for which such return is made if made for a fractional part of such year under the provisions of this act or under regulations prescribed by the board. The words "fiscal year" means an accounting period of twelve (12) months, ending on the last day of any month other than December thirty-first.

(4) The word "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person whether individual or corporate, acting in any fiduciary capacity for any person, trust or estate.

(5) The word "paid" for the purposes of the deductions and credits under this act means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act. The term "received" for the purpose of computation of net income under this act, means received or accrued and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act.

(6) The word "resident" applies only to natural persons and includes for the purpose of determining liability to the tax imposed by this act with reference to the income of any taxable year, any person domiciled in the state of Montana, and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

(7) The word "dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(8) The words "foreign country" or "foreign government" mean any jurisdiction other than one embraced within the United States. The words "United States" include the states, the territory of Hawaii, and the District of Columbia.

(9) The words "information agents" include all individuals, corporations, associations and partnerships, in whatever capacity acting, including lessees, or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state, or of any municipal corporation or political subdivision of the state,

having the control, receipt, custody, disposal or payment, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits and income with respect to which any person or fiduciary is taxable under this act.

(10) The term "net income" means the gross income of a taxpayer less the deductions allowed by this act.

(11) The term "taxable income" means the gross income of a taxpayer less the deductions and exemptions provided for in this act.

84-4902. Rate of income tax. There shall be levied, collected and paid for each taxable year upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions, as hereinafter provided, a tax at the following rates, to-wit:

(a) On the first one thousand dollars (\$1,000.00) of taxable income, or any part thereof, at the rate of one per centum (1%);

(b) On the next one thousand dollars (\$1,000.00) of taxable income, or any part thereof, at the rate of two per centum (2%);

(c) On the next one thousand dollars (\$1,000.00) of taxable income, or any part thereof, at the rate of three per centum (3%);

(d) On the next two thousand dollars (\$2,000.00) of taxable income, or any part thereof, at the rate of four per centum (4%);

(e) On the next two thousand dollars (\$2,000.00) of taxable income, or any part thereof, at the rate of five per centum (5%);

(f) On any taxable income in excess of seven thousand dollars (\$7,000.00) at the rate of seven per centum (7%).

Provided, however, that as to all taxable periods commencing after December 31, 1964, to and including all taxable periods ending on or before December 30, 1967, there shall be levied, collected and paid for each taxable year upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions as hereinafter provided, a tax at the following rates:

(a) On the first one thousand dollars (\$1,000.00) of taxable income, or any part thereof, at the rate of 1.1%;

(b) On the next one thousand dollars (\$1,000.00) of taxable income, or any part thereof, at the rate of 2.2%;

(c) On the next one thousand dollars (\$1,000.00) of taxable income, or any part thereof, at the rate of 3.3%;

(d) On the next two thousand dollars (\$2,000.00) of taxable income, or any part thereof, at the rate of 4.5%;

(e) On the next two thousand dollars (\$2,000.00) of taxable income, or any part thereof, at the rate of 5.6%;

(f) On any taxable income in excess of seven thousand dollars (\$7,000.00) at the rate of 7.9%.

84-4903. Tax on nonresident. A like tax is imposed upon every person not resident of this state which tax shall be levied, collected and paid annually, at the rates specified in section 84-4902, with

respect to his entire net income as herein defined from all property owned and from every business, trade, profession or occupation carried on in this state.

84-4903.1. Collection of tax from nonresidents—withholding authorized. In order to insure collection, in the manner and to the extent provided by section 84-4907, Revised Codes of Montana, 1947, as amended, of the income tax imposed upon the income of nonresidents by section 84-4903, Revised Codes of Montana, 1947, withholding of portions of certain payments to nonresidents and payment of the amounts so withheld to the state board of equalization as partial payment of such nonresidents' income tax in the manner set forth in the following sections shall be, and hereby is, required.

84-4903.2. Deducting and withholding from payments to nonresidents—transmittal to state board of equalization—additional reports and information—rules and regulations—order for withholding payments. Every person, firm, corporation, association, partnership, or fiduciary doing business in or having income in the state of Montana, including the state of Montana, its agencies, and instrumentalities, counties, cities, towns, school districts, and municipal corporations of every kind, which knowingly makes payments of any kind to any nonresident of the state of Montana for services performed within the state of Montana other than those described in sections 84-4942 and 84-4943, Revised Codes of Montana, 1947, or for casual sales of property, either real or personal, located within the state of Montana, or any prizes or winnings payable from or within the state of Montana, or hiring or having a contract with any nonresident of a temporary nature to be carried out within the state of Montana, shall deduct from such payment or payments an amount to be set by the state board of equalization, not to exceed three per cent (3%) of such payment, which shall be transmitted by him to the state board of equalization as partial payment of such nonresident's income tax.

Upon finding that reports and information, in addition to that now required by law or regulation, should be filed in order to insure the collection of Montana state income tax on payment to nonresidents for leases, rentals or royalties derived from property located within the state of Montana, the board of equalization may adopt rules and regulations requiring the filing of such reports and information.

If upon notice to a nonresident taxpayer and hearing the board finds that withholding should be made on payments to the taxpayer for leases, rentals or royalties derived from property located within the state of Montana in order to insure the collection of Montana state income tax, it may order withholding on such payments in an amount equal to the tax liability of the nonresident taxpayer. Such order shall be binding upon all withholding agents as hereinafter described who shall receive a copy thereof, by mail or otherwise, until such agent shall receive a copy of an order of the board terminating such withholdings as to the nonresident taxpayer.

84-4903.3. Exceptions from withholding requirements. Payments made for livestock or agricultural products raised or grown outside Montana, and sold at a market within this state shall not be subject to withholding under this act.

84-4903.4. Withholding agent. Every such person, firm, etc. required to withhold such payments under the provisions of section 2 (84-4903.2) above preceding shall be known as a withholding agent within the meaning of this act.

84-4903.5. Quarterly payment by withholding agent—exception. Withholding agents required to deduct and withhold tax payments under the provisions of section 2 (84-4903.2, Revised Codes of Montana, 1947) shall remit such payments quarterly to the state board of equalization for each quarterly period on or before the last day of the month following the close of such quarterly period.

Provided, however, that when the aggregate total amount of the tax withheld under the provisions of section 2 (84-4903.2, Revised Codes of Montana, 1947) shall amount to less than ten dollars (\$10.00) in each quarterly period of any year, such withholding agent shall not be required to file the quarterly returns or to make the quarterly payments last hereinabove provided for, but in lieu thereof such withholding agent shall, on or before February fifteenth of the year next succeeding that in which such payments were withheld, file an annual return in such form as shall be determined by the board, and shall pay therewith the amount required by this act to be deducted and withheld by such withholding agent from all payments paid during the preceding calendar year.

84-4903.6. Modification of withholding provisions. The conditions set forth in section 2 (84-4903.2) may be modified by the state board of equalization provided:

(a) The withholding agent shall insure the board by bond or deposit of securities subject to approval by the state treasurer, or cash which shall not bear interest, that he will comply with the withholding requirements insofar as his obligation as a withholding agent is concerned, or

(b) The nonresident taxpayer shall furnish to the state board of equalization under such rules and regulations as it may prescribe an affidavit as to the correct amount of taxable income subject to the provisions of this act, in which case the state board of equalization shall determine the amount to be withheld.

84-4903.7. Failure to withhold or pay—penalties. If any withholding agent knowingly fails to withhold or pay to the state board of equalization any sums required by this act, or any order made pursuant to this act, to be withheld and paid, the same additions to the amount of such tax shall be imposed and added as those specified in section 84-4924, Revised Codes of Montana, 1947, with respect to failure to make a return of income or to pay any income tax; and any individual, corporation or partnership, or any officer or employee thereof, who, with intent to evade any tax or any requirement of this

act, or who, with like intent, files or supplies any false or fraudulent statement or information, shall be liable to the same penalties as those imposed by section 84-4924, Revised Codes of Montana, 1947, with respect to filing or supplying any false or fraudulent statement or information with respect to income taxes.

84-4903.8. Board may require withholding agent to make return and pay tax at any time. If the state board of equalization in any case has reason to believe that the collection of the tax provided for in this section is in jeopardy, it may require the withholding agent to make such return and pay such tax at any time.

84-4903.9. Amounts withheld as lien against agent—priority. In addition to the penalties above provided, if any withholding agent shall withhold any sums required to be withheld and paid over to the state board of equalization under this act, the amount of the sums so withheld shall constitute a first lien against all property, real and personal, tangible and intangible, of the withholding agent, which lien shall take precedence over all others, it being the intention of this act that the funds withheld by the withholding agent shall be considered funds held in trust by the withholding agent.

84-4903.10. Rights of nonresident. No nonresident taxpayer shall have any right of action against a withholding agent on account of any monies withheld and paid over to the state board of equalization under this act, but nothing in this section shall be construed as removing any legal rights or remedies of such nonresident taxpayer for return of any tax erroneously or illegally collected or for any refund that may be due him.

For the purpose of any contract, leases or other obligations, any sum withheld pursuant to this act shall be deemed to have been paid to the nonresident at the time of such withholding.

84-4903.11. Nonresident ad valorem taxpayers—list—duty of county assessor. It shall be the duty of the county assessor of every county in this state to prepare annually a list showing the names and addresses of all nonresident ad valorem taxpayers in his county, as shown on the current assessment roll, and forward such list to the state board of equalization after the completion of the roll on the second Monday in July but not later than September thirtieth of each year.

84-4903.12. List of loans made to nonresidents upon grain for which chattel mortgage filed—duty of clerk to prepare. It shall be the duty of the county clerk and recorder of every county in this state to prepare monthly a list showing such information as may be prescribed by the state board of equalization with respect to each loan made to a nonresident upon grain for which a chattel mortgage has been filed in his office and such list shall be mailed to the state board of equalization not later than the tenth day of the month following.

84-4903.13. Rules and regulations. The state board of equalization is hereby empowered to make all necessary rules and regulations for carrying out and enforcing this act.

84-4904. Tax is personal debt due state. Every tax imposed by this act, and all increases, interest and penalties thereon, shall be from the time it is due and payable, a personal debt from the person or fiduciary liable to pay the same to the state of Montana.

84-4905. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, and in addition shall include the following:

(a) Interest received on obligations of a state, territory, county or municipality;

(b) Refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Adjusted gross income does not include the following which are exempt from taxation under this act:

(a) Interest income from obligations of the United States government.

(b) Dividends from capital stock of national banks located within the state of Montana.

(c) All benefits received under the federal employees retirement act not in excess of thirty-six hundred dollars (\$3600).

(d) All benefits paid under the Montana teachers retirement act which are specified as exempt from taxation by section 75-2713, R.C.M. 1947.

(e) All benefits paid under the Montana public employees act which are specified as exempt from taxation by section 68-1303, R.C.M. 1947.

(f) All benefits paid under the Montana highway patrol retirement act which are specified as exempt from taxation by section 31-221, R.C.M. 1947.

(g) Montana income tax refunds or credits thereof.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect, but with respect to which the election provided for under section 84-1501.2, R.C.M. 1947, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distribution from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

84-4906. Deductions allowed in computing net income. In computing net income, there shall be allowed as deductions:

(a) The items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or

amended, except that state income tax paid shall not be deductible and also subject to the exceptions provided in section 84-4909, relating to items not deductible.

(b) Federal income tax paid within the taxable year.

84-4907. Nonresident taxpayers. In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income from sources within this state, but shall not include income from annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations, or dividends on stock of corporations; except to the extent to which the same shall be a part of income from any business, trade, profession or occupation carried on in this state. Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules and regulations prescribed by the state board of equalization.

In the case of a taxpayer other than a resident of this state, the deductions allowed in computing net income shall be restricted to those directly connected with the production of Montana income. A temporary resident shall be allowed those deductions allowed a resident to the extent that such deductions were actually incurred or expended in the state of Montana during the course of his residency.

84-4907.1. Veterans' bonus—exemption from income tax law. All payments made under the World War I Bonus Law, Korean Bonus Law and the Veterans' Bonus Law, are hereby exempt from taxation under the income tax laws of the state of Montana, and any income tax which has been or may hereafter be paid on income received from this source shall be considered an overpayment and shall be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the board, in the same manner as other income tax refund claims are paid.

84-4908. Alternative deduction allowed in computing net income. In the case of a resident individual, a standard deduction equal to ten per cent (10%) of adjusted gross income, prior to the allowance of deductions provided for in section 84-4906, shall be allowed if elected by the taxpayer on his return and such deduction shall be in lieu of the deductions provided for in the above-referred section 84-4906. The maximum standard deduction shall be five hundred dollars (\$500.00) except in the case of a single joint return of husband and wife the maximum standard deduction shall be one thousand dollars (\$1,000.00). The standard deduction shall not be allowed to a husband or wife if the tax of the other spouse is determined on the basis of net income computed without regard to the standard deduction.

84-4909. Nondeductible items in computing net income. In computing net income no deductions shall in any case be allowed in respect of:

- (1) Personal, living, or family expenses;
- (2) Any amount paid out for new buildings or for permanent

improvements or betterments made to increase the value of any property or estate;

(3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; or

(4) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

84-4910. Exemptions. (a) Allowance of Personal Exemption. In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

(b) Taxpayer and Spouse. An exemption of six hundred dollars (\$600.00) for the taxpayer; and an additional exemption of six hundred dollars (\$600.00) for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(c) Additional Exemption for Taxpayer or Spouse Aged Sixty-five (65) or more. (1) For taxpayer. An additional exemption of six hundred dollars (\$600.00) for the taxpayer if he has attained the age of sixty-five (65) before the close of his taxable year.

(2) For spouse. An additional exemption of six hundred dollars (\$600.00) for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse has attained the age of sixty-five (65) before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(d) Additional Exemption for Blindness of Taxpayer or Spouse. (1) For taxpayer. An additional exemption of six hundred dollars (\$600.00) for the taxpayer if he is blind at the close of his taxable year.

(2) For spouse. An additional exemption of six hundred dollars (\$600.00) for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this paragraph, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year such determination shall be made as of the time of such death.

(3) Blindness defined. For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(e) Additional Exemption for Dependents. (1) In general. An exemption of six hundred dollars (\$600.00) for each dependent:

(A) Whose gross income for the calendar year in which the

taxable year of the taxpayer begins is less than six hundred dollars (\$600.00), or

(B) Who is a child of the taxpayer and who (i) has not attained the age of nineteen (19) years at the close of the calendar year in which the taxable year of the taxpayer begins, or (ii) is a student.

(2) Exemption denied in case of certain married dependents. No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(3) Child defined. For purposes of paragraph (1) (B), the term "child" means an individual who is a son, stepson, daughter or stepdaughter of the taxpayer.

(4) Student and educational institution defined. For purposes of paragraph (1) (B) (ii), the term "student" means an individual who during each of five (5) calendar months during the calendar year in which the taxable year of the taxpayer begins.

(A) Is a full time student at an educational institution; or

(B) Is pursuing a full time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this paragraph, the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(f) General Definition. For purposes of this section, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

(1) A son or daughter of the taxpayer, or a descendant of either,

(2) A stepson or stepdaughter of the taxpayer,

(3) A brother, sister, stepbrother, or stepsister of the taxpayer,

(4) The father or mother of the taxpayer, or an ancestor or either,

(5) A stepfather or stepmother of the taxpayer,

(6) A son or daughter of a brother or sister of the taxpayer,

(7) A brother or sister of the father or mother of the taxpayer,

(8) A son-in-law, daughter-in-law, a father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer,

(9) An individual who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer, and is a member of the taxpayer's household, or

(10) An individual who

(A) is a descendant of a brother or sister of the father or mother of the taxpayer,

(B) for the taxable year of the taxpayer received institutional care required by reason of a physical or mental disability, and

(C) before receiving such institutional care, was a member of the same household as the taxpayer.

(g) Rules Relating to General Definition. For purposes of this section:

(1) the terms "brother" and "sister" include a brother or sister by the halfblood.

(2) In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(h) Determination of Marital Status. For purposes of this part

(1) The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(i) Proration of exemption deduction in the case of a nonresident taxpayer

(1) The exemption deduction shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income.

84-4911. Income tax involving partnership—partnership statements required. Individuals carrying on a business in partnership shall be liable for income tax only in their individual capacity. There shall be included, in computing the net income of each partner, his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or, if his net income for such taxable year is computed upon the basis of a period different from that upon the basis for which the net income of the partnership is computed, then there shall be included his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed. Taxpayers who are members of partnerships are required by the department to furnish a copy of their federal partnership return.

84-4912. Tax on beneficiaries or fiduciaries of estates or trusts.

(1) A tax shall be imposed upon either the fiduciaries or the beneficiaries of estates and trusts as hereinafter provided, except to the extent such estates and trusts shall be held for educational, charitable or religious purposes, which tax shall be levied, collected and paid annually with respect to the income of estates or of any kind of property held in trust, including:

(a) Income received by estates of deceased persons during the period of administration or settlement of the estate;

(b) Income accumulated in trust for the benefit of unborn or unascertained persons, or persons with contingent interests;

(c) Income held for future distribution under the terms of the will or trust;

(d) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant to be held or distributed as the court may direct; and

(e) Income of an estate during the period of administration or settlement permitted by subdivision three (3) of this section to be deducted from the net income, the tax with reference to which is to be paid by the fiduciary.

(2) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether the fiduciary or the beneficiaries be taxable with reference to the income of such estate or trust. The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this act for individual taxpayers, except that there shall also be allowed as a deduction any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is paid to or held for the United States, or any state, territory or any political subdivision thereof, or the District of Columbia; and in cases under paragraphs (d) and (e) of subdivision one (1) of this section, the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

(3) In cases under paragraphs (a), (b) and (c) of subdivision one (1) of this section, the tax shall be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement, there may be deducted the amount of any income properly paid or credited to any legatee, heir or other beneficiary. In such cases, the fiduciary of the estate or trust shall be allowed the same exemptions as are allowed to single persons under section 84-4910, and in such cases the fiduciary of any estate or trust created by a person not a resident, or of an estate of a person not a resident shall be subject to a tax only to the extent to which individuals other than residents are liable under section 84-4907.

(4) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under the next paragraph of this section in the same or any succeeding taxable year.

In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and

in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is properly paid or credited during such year to any legatee, heir or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir or beneficiary.

If the taxpayer's net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year shall be computed upon the basis on which such beneficiary's net income is computed. In such cases a beneficiary not a resident shall be taxable with respect to his income derived through such estate or trust only to the extent provided in section 84-4907, for individuals other than residents.

(5) The fiduciary of a trust created by an employer as a part of a stock bonus, pension or profit-sharing plan for the exclusive benefit of some or all of his employees, to which contributions are made by such employer or employees or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under this section, but any amount contributed to such fund by the employer and all earnings of such fund shall be included in computing the income of the distributee in the year in which distributed or made available to him.

(6) Where any part of the income of a trust, other than a testamentary trust, is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified relating to the so-called "charitable contribution" deduction) or to the payment of premiums upon policies of life insurance under which the grantor is the beneficiary, such part of the income of the trust shall be included in computing the net income of the grantor.

84-4913. Information agents' duties. Every information agent shall make return to the board of complete information concerning the amount of all interest, rent, salaries, wages, premiums, annuities, dividends, compensations, remunerations, emoluments or other fixed or determinable gains, profits and income, except interest coupons payable to the bearer, upon which no withholding tax has been deducted, of any person taxable under this act, of five hundred dollars (\$500.00) or more in any taxable year under such regulations and in such form and manner and to such extent as may be prescribed by the board.

84-4914. Returns and payment of tax—penalty and interest—refunds—credits. (1) Every single individual and every married individual filing a separate return, having a gross income for the

taxable year of six hundred dollars (\$600.00) or over and married individuals filing a joint return having a combined gross income for the taxable year of twelve hundred dollars (\$1,200.00) or over shall be liable for a return to be filed on such forms and according to such rules and regulations as the board of equalization may prescribe.

(2) In accordance with instructions set forth by the board, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several.

(3) If any such taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(4) All taxpayers, including, but not limited to those subject to the provisions of sections 84-4939, and 84-4943 as amended shall compute the amount of income tax payable and shall at the time of filing the return required by this act, pay to the board any balance of income tax remaining unpaid after crediting the amount withheld as provided by section 84-4943 as amended and/or any payment made by reason of an estimated tax return provided for in section 84-4939 as amended, provided however, the tax so computed is greater by one dollar (\$1.00) than the amount withheld and/or paid by estimated return as provided in this act.

If the amount of tax withheld and/or payment of estimated tax exceeds by more than one dollar (\$1.00) the amount of the income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the board shall examine it and verify the tax.

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the board within thirty (30) days after notice of the amount of the tax as computed with interest added at the rate of six per centum (6%) per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within thirty (30) days after the first notice of the amount is mailed to the taxpayer.

If payment is not made within thirty (30) days or if the understatement is due to negligence on the part of the taxpayer, but without fraud, there shall be added to the amount of the deficiency five per centum (5%) thereof, provided, however, that no deficiency penalty shall be less than two dollars (\$2.00). Interest will be computed at the rate of six per centum (6%) per annum or fraction thereof on the additional assessment. Except as otherwise expressly provided in this subdivision, the interest shall in all cases be computed from the date the return and tax was originally due (as distinguished from the due date as it may have been extended) to the date of payment.

If the time for filing a return is extended, the taxpayer shall pay in addition, interest thereon at the rate of six per centum (6%) per annum from the time when the return was originally required to be filed to the time of payment.

84-4915. Exemption allowed nonresident—effect of changing resident status. If a taxpayer changes his status from that of resident to that of nonresident, or from that of nonresident to that of resident, during the taxable year, he shall file a return covering the fraction of the year during which he was a resident. The exemptions provided in section 84-4910 shall be prorated on the ratio the Montana adjusted gross income bears to federal adjusted gross income. A Montana citizen moving out of the state; abandoning his residence in the state and establishing a residence elsewhere, must file a return on the fractional basis. If he obtains employment outside the state, without abandoning his Montana residence then income from such employment is taxable in Montana.

84-4916. Repealed—Chapter 260, Laws of 1955.

84-4917. Return of fiduciary. Every fiduciary (except receivers appointed by authority of law in possession of part only of the property of a taxpayer) shall make a return for the individual or estate or trust from whom he acts.

Fiduciaries required to make returns under this act shall be subject to all the provisions of this act which apply to taxpayers.

84-4918. Repealed—Chapter 260, Laws of 1955.

84-4919. Time for filing—affidavit—forms. Returns shall be made to the board on or before the fifteenth day of the fourth month following the close of the fiscal year, or, if the return is made on the basis of the calendar year, then the return shall be made on or before the fifteenth day of April in each year. The board may grant a reasonable extension of time for filing returns whenever in its judgment good cause exists and shall keep a record of every such extension and the reason therefor. Except in the case of persons who are abroad, no such extension shall be granted for more than six (6) months. Such returns shall set forth such facts as the board may deem necessary for the proper enforcement of this act. There shall be annexed to such return the affidavit or affirmation of the persons making the return, to the effect that the statements contained therein are true. Blank forms of return shall be furnished by the board upon application, but failure to secure the form shall not relieve any taxpayer from the obligation of making any return herein required; provided, that every taxpayer liable for a tax under this law shall pay a minimum tax of one dollar (\$1.00).

84-4920. Revision of return—time for determining tax—examination of records and persons. If, in the opinion of the board, any return of a taxpayer is in any essential respect incorrect, it may revise such return, or if any taxpayer fails to make return as herein required, the board is authorized to make an estimate of the taxable income of such taxpayer from any information in its possession, and

to audit and state an account according to such return or the estimate so made by it for the taxes, penalties and interest due the state from such taxpayer. Except in the case of wilfully false or fraudulent return with intent to evade the tax, the amount of tax due under any return shall be determined by the board within five (5) years after the return was made, and the board thereafter shall be barred from revising any such returns or re-computing the tax due thereon and no proceeding in court for the collection of such tax shall be instituted after the expiration of said period notwithstanding the provisions of section 84-4929. In the case of a wilfully false or fraudulent return, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due, and where no return has been filed, the tax may be assessed at any time.

The board, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined by any agent or representative designated by it for that purpose, any books, papers or records of memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any person having knowledge in the premises, and may take testimony and require proof material for its information, with power to administer oaths to such person or persons.

84-4920.1. Suspension of running of statute of limitations—grounds. The running of the above statute of limitations shall be suspended during any period that the federal statute of limitations for collection of federal tax has been suspended by (1) written agreement signed by the taxpayer or, (2) when the taxpayer has instituted an action which has the effect of suspending the running of the federal statute of limitations, and for one (1) additional year. If the taxpayer omits from net income an amount properly includable therein which is in excess of twenty-five (25%) per cent of the amount of net income stated in the return a proceeding in court may be begun within five (5) years after the return was filed.

84-4921. Oaths may be administered by board members and employees. The board and each assistant, or deputy, may administer an oath to any person, or take the acknowledgment of any person in respect to any report or return required by or pursuant to this act, or by the rules and regulations of the board.

84-4922. Revision—application—hearing—adjustment. If an application for revision be filed with the board by a taxpayer within five (5) years from the original due date of the return the board shall grant a hearing thereon, and if it is made to appear upon any such hearing by evidence submitted to it or otherwise, that any such computation includes taxes or other changes which could not have been lawfully demanded, or that payment has been illegally made or exacted of any such amount so computed, the board shall resettle

the same according to law and the facts, and adjust the computation of taxes accordingly, and shall send notice of its determination thereon to the taxpayer.

84-4923. Repealed—Chapter 212, Laws 1957.

84-4923.1. Review by court. The determination of the state board of equalization may be reviewed in the district court for Lewis and Clark County or the county in which the taxpayer resides or has his principal office or place of business, by a complaint filed by the taxpayer against the state board of equalization within six (6) months after the receipt of notice of the decision of the state board of equalization. Upon the serving of summons upon the state board of equalization as in civil action, the cause shall proceed as other civil cases. Service upon the state board of equalization may be made by serving one copy upon the secretary of the state board of equalization or one copy upon the chairman of the state board of equalization. The remedies provided by this chapter for the collection of the tax shall be stayed and no assessment, distraint or proceedings in court for collection of the taxes shall be made, begun or prosecuted until ninety (90) days after such court action is finally determined. From any determination of such court, an appeal to the supreme court may be taken by either party.

84-4924. Penalties for violations of Act. (1) If any person, without intent to evade any tax imposed by this act, fails to make a return of income or pay any tax if one is due at the time required by or under the provisions of this act, there shall be added to the tax an additional amount equal to five (5) per centum thereof, but not less than two dollars (\$2.00), unless it is shown that the failure was due to reasonable cause and not due to neglect. Interest at the rate of six per centum (6%) per annum shall be added to the tax for the entire period it remains unpaid.

(2) If any person fails with intent to evade any tax imposed by this act, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this act there shall be added to the tax an additional amount equal to twenty-five per centum (25%) thereof, but such additional amount shall in no case be less than two dollars (\$2.00), and interest at one (1) per centum for each month or fraction of a month during which the tax remains unpaid.

(3) Any individual, corporation or partnership, or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any tax or any requirement of this act or any lawful requirement of the board thereunder, fails to pay the tax, or to make, render, sign or verify any return, or to supply any information, within the time required by or under the provisions of this act, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement, or supplies any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars (\$1,000.00), to be recovered by the attorney general, in the name of the state, by action in any court

of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars (\$1,000.00) or be imprisoned in the county jail not to exceed one (1) year, or both, at the discretion of the court.

(4) The certificate of the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

84-4925. Repealed—Chapter 227, Laws 1957.

84-4926. Deferment of collection of income tax of persons in military service—statute of limitations suspended. The collection from any person in the military service, as defined by the soldiers' and sailors' civil relief act of 1940, effective October 17, 1940, as amended October 6, 1942, of any tax prescribed by the state of Montana on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than six (6) months after the termination of his period of military service, if such person's ability to pay such tax is materially impaired by reason of such service. No interest on any amount of tax, collection of which is deferred for any period under this act, and no penalty for nonpayment of such amount during such period, shall accrue for such period of deferment by reason of such nonpayment. The running of any statute of limitations against the payment of such tax by any lawful means shall be suspended for the period of military service of any individual, the collection of such tax is deferred under this section, and for an additional period of one (1) year, beginning with the day following the period of military service.

84-4927. District court may grant stay of enforcement—no fines and penalties accrue during stay. Any such person may, during his period of military service, or within six (6) months thereafter, apply to a court for relief in respect of any tax obligation or any tax liability incurred by such person prior to his period of military service, or in respect of any such obligation or liability, whether falling due prior to or during his period of military service. Any district court of the state of Montana, after appropriate notice and hearing unless in its opinion the ability of the applicant to comply with the terms of such obligation or liability, or to pay such tax or assessment has not been materially affected by reason of his military service, may grant a stay of the enforcement thereof during the applicant's period of military service and from the date of termination of such period of military service or from the date of application, if made after such service, for a period of time equal to the period of military service of the applicant, or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid, at the date of termination of such period of military service or from the date of application as the case may be, in equal periodic installments

during such extended period at such rate of interest as may be prescribed for such tax obligation or tax liability or assessment, if paid when due, and subject to such other terms as may be just.

When any court has granted a stay, as provided in this section, no fine or penalty shall accrue during the period the terms and conditions of such stay are complied with by reason of the failure to comply with the terms or conditions of the tax obligation, tax liability or assessment in respect of which such stay was granted.

84-4928. Levy upon and sale of property for payment of income taxes. If any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the board shall issue a warrant under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owing the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the board and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty (60) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the person against whom it is levied in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the board a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof, such agent shall have the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the board shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

84-4928.1.* Release of lien or partial discharge of property. (1) The board of equalization shall issue a certificate of release of any lien imposed with respect to any tax due under Title 84, Chapter 49, R.C.M. 1947, when it finds that the liability for the amount of tax

*This section may be otherwise coded in the official supplement to the Revised Codes of Montana, 1947.

assessed, together with all penalties and interest in respect thereof, has been fully satisfied. The board of equalization may issue a certificate of release if it determines that the lien is unenforceable.

(2) The board of equalization may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under Title 84, Chapter 49, R.C.M. 1947, if:

(a) It finds that the fair market value of that part of the property remaining subject to the lien is at least double the value of the unsatisfied liability secured by such lien and the amount of all other liens upon the property which have priority to such lien;

(b) There is paid to the state treasurer in part satisfaction of the liability secured by the lien, an amount which shall not be less than the value, as determined by the board of equalization, of the interest of the state of Montana in the part to be discharged; or

(c) The board of equalization determines at any time that the interest of the state of Montana in the part to be so discharged has no value.

84-4929. Action by attorney general. Action may be brought at any time by the attorney general of the state at the instance of the board, in the name of the state to recover the amount of any taxes, penalties and interest due under this act.

84-4930. Board authorized to make rules and regulations. The board is hereby authorized to make such rules and regulations and to require such facts and information to be reported as it may deem necessary to enforce the provisions of this act.

84-4931. Divulging information unlawful—exceptions—penalty. (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the board or any deputy, assistant, agent, clerk or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this act, or any other information secured in the administration of this act. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding, under the provisions of this act, or any other taxing act, to which the board is a party, or on behalf of any party to any action or proceedings under the provisions of this act or such other act when the reports or facts shown thereby are directly involved in such action or proceedings, in either of which events, the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceedings and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general, or other legal representatives of the state, of the report or

return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted in accordance with the provisions of section 84-4928 and section 84-4929. Reports and returns shall be preserved for three (3) years and thereafter until the board orders them to be destroyed.

(2) Any offense against subdivision one (1) of this section shall be punished by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment in the county jail not exceeding one (1) year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of one (1) year, thereafter.

(3) Notwithstanding the provisions of this section, the board may permit the commissioner of internal revenue of the United States, or the proper officer of any state imposing a tax upon the incomes of individuals, or the authorized representatives of either such officer, to inspect the returns of income of any individuals, or may furnish to such officer or his authorized representatives an abstract of the return of income of any individual or supply him with information concerning any item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any individual, but such permission shall be granted or such information furnished to such officer or his representative, only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this act.

84-4932. Construction of net income. For the purpose of raising revenue the net income required to be shown on returns under this act and taken as the basis for determining the tax hereunder shall not be classified or held or construed to be property. And all income, except what has been expressly exempted under the provisions of this act and income not permitted to be taxed under the constitution of this state or the constitution or laws of the United States, shall be included and considered in determining the net income of taxpayers within the provisions of this act.

84-4933 to 84-4935. Repealed—Chapter 260, Laws of 1955.

84-4936. Income tax statute—reference—definition. Whenever the phrase "this act" appears herein, it refers to Chapter 49 of this Title, relating to personal income taxes and all acts amendatory thereof and supplementary thereto.

84-4937. Credit allowed resident taxpayers for income taxes imposed by foreign states. Subject to the following conditions, residents of this state shall be allowed a credit against the taxes imposed by this act for income taxes imposed by and paid to another state or country on income taxable under this act.

(1) The credit shall be allowed only for taxes paid to such other state on income derived from sources within such state which is taxable under the laws of such state or country irrespective of the residence or domicile of the recipient;

(2) The credit shall not be allowed if such other state or country allows residents of this state a credit against the taxes imposed by such state for taxes paid or payable under this act;

(3) The allowable credit shall be computed by formula to be prescribed by the board.

84-4938. Furnishing copy of federal return. Every taxpayer shall upon request of the board, furnish a copy of the return for the corresponding year which he has filed or may file with the federal government showing his net income and how obtained and the several sources from which derived. Every taxpayer shall, upon request of the board, furnish a copy of any federal revenue agent's report made upon any audit or adjustment of the federal income tax return. The board shall supply all necessary forms and shall return all such forms to the taxpayer after they have been examined by the board, upon the request of the taxpayer.

84-4939. Declaration of estimated tax. (1) Every individual, except farmers, ranchers or stockmen, shall, at the time prescribed in subsection (3) of this section, make a declaration of his estimated tax for the taxable year, if his net income from sources other than wages, salaries, bonus, or other emolument can reasonably be expected to equal or exceed his net income from wages, salaries, bonus or other emolument, which wages, salaries, bonus or other emolument are subject to withholding.

(2) In the declaration required under subsection (1) of this section the individual shall state:

(a) The amount which he estimates as the amount of tax under section 84-4902 for the taxable year:

(b) The amount which he estimates will be withheld from wages paid by his employer if said individual is an employee.

(c) The excess of the amount estimated under subparagraph (a) over the amount estimated under subparagraph (b) which excess for purposes of this section shall be considered the estimated tax for the taxable year.

(d) Such other information as may be prescribed in rules and regulations promulgated by the board.

(3) The declaration required under subsection (1) of this section shall be filed with the board on or before April fifteenth of the taxable year except that if the requirements of subsection (1) of this section are first met:

(a) After April first and before October first of the taxable year the declaration shall be filed on or before October fifteenth of the taxable year.

(b) After October first of the taxable year the declaration shall be filed on or before February fifteenth of the succeeding taxable year.

Provided that the declaration required to be filed during 1955 may be filed not later than October 15, 1955 if the requirements of subsection (1) of this section are fulfilled at any time prior to October 2, 1955.

(4) An individual may make amendments of a declaration filed during the taxable year under subsection (3) of this section under rules and regulations prescribed by the board.

(5) If on or before February fifteenth on the succeeding taxable year, the taxpayer files a return for the taxable year for which the declaration is required and pays in full the amount computed on their return as payable then under rules and regulations prescribed by the board.

(a) If the declaration is not required to be filed during the taxable year but is required to be filed on or before such February fifteenth, such return shall for the purposes of this section be considered as such declaration; and

(b) If the tax shown on the return is greater than the estimated tax shown in a declaration previously made or in the last amendments thereof such return shall for the purposes of this section be considered as the amendment of the declaration permitted by subsection (4) of this section to be filed on or before such February fifteenth.

(6) The board shall promulgate rules and regulations governing reasonable extensions of time for filing declarations and paying the estimated tax, except in the case of taxpayers who are abroad, and no such extension shall be for more than six (6) months.

(7) If the taxpayer is unable to make his own declaration, the declaration shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

84-4940. Installment payments of estimated tax. (1) Estimated tax provided for in section 84-4939 shall be paid as follows: (a) If the declaration is filed on or before April fifteenth of the taxable year the estimated tax shall be paid in two (2) equal installments. The first installment shall be paid at the time of filing of the declaration and the second or last installment shall be paid on October fifteenth of the taxable year:

(b) If the declaration is filed after April fifteenth and not after October fifteenth of the taxable year and is not required by subsection (3) of section 84-4939 to be filed on or before April fifteenth of the taxable year the estimated tax shall be paid at the time of filing of the declaration:

(c) If the declaration is filed after October fifteenth of the taxable year and is not required by subsection (3) of section 84-4939 to be filed on or before October fifteenth of the taxable year, the estimated tax shall be paid in full at the time of filing of the declaration.

(d) If the declaration is filed after the time prescribed in section 84-4939 including cases where extensions of time have been granted, paragraphs (b) and (c) of this subsection shall not apply and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in subsection (3) of section 84-4939 and the remaining installments shall be paid at

the times at which and in the amounts in which they would have been payable if the declaration had been so filed. Provided that payments required under this section for purposes of the taxable year 1955 shall be limited to fifty per cent (50%) of the total estimated tax for 1955.

(2) If any amendment of a declaration is filed after April fifteenth and before October fifteenth of the taxable year the remaining installment, if any, shall be ratably increased or decreased as the case may be; to reflect the respective increase or decrease in the estimated tax by reason of such amendment and if any amendment is made after October fifteenth of the taxable year any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(3) At the election of the individual any installment of the estimated tax may be paid prior to the date prescribed for its payment.

(4) Payment of the estimated tax or any installment thereof shall be considered payment on account of the tax for the taxable year.

(5) The application of this section of this act to taxable years of less than twelve (12) months shall be as prescribed in the rules and regulations promulgated by the board.

(6) In the application of this section of this act to taxpayers reporting income on a fiscal year basis there shall be substituted for the dates specified therein the months corresponding thereto.

84-4941. Constitutionality. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act.

84-4942. Definitions. When used in this act:

(a) The word "board" means the state board of equalization.

(b) The term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) For active service as a member of the armed forces of the United States;

(2) for agricultural labor as defined in paragraph (c) following;

(3) for domestic service in a private home, a local college club, or local chapter of a college fraternity or sorority;

(4) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars (\$50.00) or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if;

(A) on each of some twenty-four (24) days during such quarter

such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business.

(B) such individual was regularly employed (as determined under subparagraph (a) (A) by such employer in the performance of such service during the preceding calendar quarter.

(5) for services by a citizen or resident of the United States for a foreign government or an international organization.

(6) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.

(7) (A) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution or

(B) for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(8) for services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; when such payments are in the form of lodgings or meals and such services are received by the employee at the request of and for the convenience of the employer;

(9) to or for an employee as a payment for or a contribution toward the cost of any group plan or program which benefits the employee, including, but not limited to, life insurance, hospitalization insurance for the employee or dependents, and employees' club activities.

(c) The term "agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(d) Payroll period—For purposes of this chapter, the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer.

(e) Employee—For purposes of this chapter, the term "employee" includes an officer, employee or elected public official of the United States, the state of Montana, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

(f) Employer—The term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" means the person having control of the payment of such wages.

89-4943. Deduction and withholding of tax from wages—amount. Every employer making payment of wages shall deduct and withhold upon such wages, a tax determined in accordance with the withholding tax tables which shall be prepared and issued by the board. Persons on active service as a member of the armed forces of the United States shall not be subject to the provisions of this section.

89-4944. Repealed—Chapter 227, Laws 1957.

89-4945. Employer liable for amounts deducted and withheld. Every employer shall be liable for the amounts hereinbefore required to be deducted and withheld, and such amounts shall be considered as a tax and with respect thereto the employer shall be considered a taxpayer. If the employer fails to deduct and withhold the amounts specified in this act, and thereafter the tax against which such deducted and withheld amounts would have been credited, is paid, the amounts so required hereby to be deducted and withheld shall not be collected from the employer.

84-4946. Quarterly payment by employer—exception. On or before the last day of the months of April, July, October, and January of each calendar year, beginning with the month of October, 1955, every employer subject to the provisions of this act shall file a return in such form and containing such information as shall be determined by the board, and shall pay therewith the amount required by this act to be deducted and withheld by said employer from wages paid during the preceding quarterly period of three (3) months, beginning with wages paid from and after July 1, 1955.

Provided, however, that when the aggregate total amount of the tax withheld under the provisions of this act upon the wages of all employees of any employer shall amount to less than ten dollars (\$10.00) in each quarterly period of any year, such employer shall not be required to file the quarterly returns or to make the quarterly payments last hereinabove provided for, but in lieu thereof such employer shall, on or before February fifteenth of the year next succeeding that in which such wages were paid, file an annual return in such form as shall be determined by the board, and shall pay therewith the amount required by this act to be deducted and withheld by said employer from all wages paid during the preceding calendar year.

84-4947. Amount withheld considered as tax collected. All amounts deducted and withheld shall be considered as a tax collected under the provisions of this act, and no employee shall have

any right of action against his employer in respect to any moneys so deducted and withheld from his wages and paid to the state of Montana in compliance or intended compliance with this act.

84-4948. Annual withholding statement. Every employer shall, prior to the fifteenth day of February in each year furnish to each employee a written statement showing the total wages paid by the employer to the employee during the preceding calendar year and showing the amount of the federal income tax deducted and withheld from such wages and the amount of the tax deducted and withheld therefrom under the provisions of this act. Said statement shall contain such additional information and shall be in such form as the board shall prescribe, and a duplicate thereof shall be filed by the employee with his state income tax return.

84-4949. Repealed—Chapter 227, Laws 1957.

84-4950. Filing of annual statement by employer—duty. Every employer shall, on or before the fifteenth day of February in each year file with the board a statement in such form and summarizing such information as the board shall require, including the total wages paid to each employee during the preceding calendar year or any part thereof, and showing the total amount of the federal income tax deducted and withheld from such wages and the total amount of the tax deducted and withheld therefrom under the provisions of this act. Said annual statement filed by an employer shall, with respect to the wage payments reported therein, constitute full compliance with the requirements of section 84-4913, relating to the duties of information agents, and no additional information return shall be required with respect to such wage payments.

84-4951. Amounts withheld, held in trust for state—warrants to collect. Every employer who deducts and withholds any amounts under the provisions of this act shall hold the same in trust for the state of Montana, and if any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the board shall issue a warrant under its official seal which shall have the same force and effect and shall be enforced and carried into execution in the same manner as that specified in section 84-4928, with respect to warrants relating to unpaid income taxes.

84-4952. Repealed—Chapter 227, Laws 1957.

84-4953. Repealed—Chapter 126, Laws 1963.

84-4954. Violations by employer—penalties. If any employer shall fail to pay over to the state the tax deducted and withheld under the provisions of this act, or shall fail to file or furnish any statement herein provided for, within the time herein prescribed therefor, the same additions to the amount of such tax shall be imposed and added as those specified in section 84-4924, with respect to failure to make a return of income or to pay any income tax; and any individual, corporation, or partnership, or any officer or employee thereof, who, with intent to evade any tax or any require-

ment of this act, or who, with like intent, files or supplies any false or fraudulent statement or information, shall be liable to the same penalties as those imposed by section 84-4924, with respect to filing or supplying any false or fraudulent statement or information with respect to income taxes.

84-4955. Rules and regulations—remedies for administration, enforcement and collection. The board is hereby empowered to adopt rules and regulations for the carrying out of the provisions of this act and the enforcement thereof. All of the remedies available to the state of Montana for the administration, enforcement and collection of income taxes shall be available and shall apply to the tax required to be deducted and withheld under the provisions of this act.

84-4956. Credits and refunds. If the board of equalization discovers from the examination of a return, or upon claim duly filed by a taxpayer, or upon final judgment of a court, that the amount of income tax is in excess of the amount due, or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment shall be credited against any income tax, penalty or interest, then due from the taxpayer, and the balance of such excess shall be refunded to the taxpayer.

Effective with taxable years ending on or after December 31, 1959, no such credit or refund shall be allowed or made after five (5) years from the date prescribed by statute for filing the return, unless before the expiration of such period a claim therefor is filed by the taxpayer, or the board of equalization has determined the existence of the overpayment and has approved the refund or credit thereof. Within six (6) months after a claim for refund is filed the state board of equalization shall examine said claim and either approve or disapprove it. If said claim is approved, the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state board of equalization shall so notify the said taxpayer and shall grant a hearing thereon upon proper application by the taxpayer. If the board disapproves a claim for refund, review of the determination of the board may be had as otherwise provided in this chapter.

Except as hereinafter provided for, effective with taxable years ending on or after December 31, 1962, interest shall be allowed on overpayments at the rate of six per cent (6%) per annum from the due date of the return or from the date of the overpayment (whichever date is later) to the date the board of equalization approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment shall be deemed to be the date on which the return for the taxable year was due. No interest shall accrue on an overpayment if the taxpayer elects to have it applied to his estimated tax for the succeeding taxable year; nor shall interest accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the state board of equalization for the purpose of verifying the amount of the overpayment. No interest shall be allowed (a) if the

overpayment is refunded within six (6) months from the date the return is due or the date the return is filed, whichever date is later; or (b) if the overpayment results from the carryback of a net operating loss; or (c) if the amount of interest is less than one dollar (\$1.00). An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability, or one reasonably assumed to be imposed by this law, shall not be considered an overpayment with respect to which interest is allowable.

84-4957. Repealed—Chapter 126, Laws 1963.